

October 30, 2003

FILED ELECTRONICALLY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street SW, Room TW-A325
Washington, DC 20554

Re: Ex Parte Presentation in MB Docket No. 02-230 (Digital Broadcast Copy Protection)

Dear Ms. Dortch:

This is to notify you that on October 28, 2003, representatives of Sony Pictures Entertainment (“Sony Pictures”) and Sony Electronics Inc. (“Sony Electronics”) made an *ex parte* presentation to Commission staff regarding the above referenced proceeding. Participants in the meeting were Rick Chessen, Steven Broeckert, and Susan Mort of the Media Bureau; Amy Nathan of the Office of Strategic Planning and Policy Analysis; Hope Boonshaft and Mitch Singer of Sony Pictures (by telephone); Alicia Smith of the Smith Free Group, for Sony Pictures; and Joel Wiginton (the undersigned) and John Godfrey of Sony Electronics.

The presentation made the following points:

- Sony Electronics and Sony Pictures support the Commission’s “Broadcast Flag” rulemaking, and Sony Pictures does not believe the rulemaking should be delayed.
- Sony Electronics and Sony Pictures support the addition of objective technical/licensing criteria to the criteria outlined in the Joint Proposal from the MPAA and 5C as an alternative means to evaluate a new protection technology for inclusion on the approved list pursuant to the Commission’s Broadcast Flag rulemaking (the so called “Table A”). Because of the complexity and importance of this matter, however, the objective criteria should be added only after further discussion among the relevant industries. At a minimum, the Commission should not act on objective technical/licensing criteria until there is an opportunity for public comment in response to a Further Notice of Proposed Rulemaking (“FNPRM”) specifically addressing this issue.

- In addition to the Table A approval process, Sony Electronics and Sony Pictures believe in principle that there should be a more streamlined, self-certification process for proprietary, display-only interfaces. By way of example, a manufacturer may have a set of products that consist of separate units that have a proprietary display connection between the two units (*e.g.* a tuner unit and a monitor unit). Had it been a single unit product, transmission between the tuner and monitor would not be required to be protected by a relatively complex and expensive Table A content protection technology. In such limited cases, a manufacturer should be allowed to employ a more economical proprietary content protection technology that might be less sophisticated than an officially approved technology but which still offers sufficient protection against retransmission outside the home or similar local environment. And as long as the use of such a technology is kept proprietary, not licensed to third parties, employed only to transmit content for video display or audio rendering purposes and so long as the regulation provides expedited enforcement in the event of a breach of such proprietary display interface compliance rules, the risk of circumvention is limited.

Sony Electronics and Sony Pictures believe that the details of this potential self-certification process for such proprietary, display only technologies are sufficiently complex that it too should be the subject of an FNPRM.

- Sony Pictures and Sony Electronics believe that Table A technologies, including Digital Transmission Content Protection (“DTCP”), should be approved generically. That is, it would be excessively burdensome and time consuming to require Commission approval every time an approved technology is mapped to a new transport. Indeed, generic approval was specifically contemplated in connection with the MPAA/5C Joint Proposal.

The DTLA, through its “Change Management” process involving Warner Bros. and Sony Pictures, recently announced that it had mapped DTCP for use over Internet protocol (“IP”) and will shortly release a revised specification allowing for such use. This is critically important because home networking is essential for consumers to enjoy broadcast content in their home network, and IP is emerging as the leading transport layer for home networking. The Commission, therefore, should allow for the use of DTCP over all outputs, including IP, approved for use under the DTLA license.

- The MPAA/5C Joint Proposal suggested that the Commission’s Broadcast Flag rule require that digital recordings of digital broadcast content be made with a Table A technology, but there is no such technology currently available for the popular +RW DVD recording format. Whereas Content Protection for Recordable Media (“CPRM”) is mapped to –RW and RAM DVD recorders, CPRM has not yet been licensed for nor mapped to +RW DVD recorders.

- Sony Electronics and Sony Pictures believe that the scope of the broadcast flag regulation should be broad enough to cover: (1) networks based on physical locations approximating a home or similar local environment, such as all of the products in a home and its immediate vicinity; (2) networks based on the identity of the user (*i.e.*, not a physical location); and (3) some hybrid of one and two.¹

The first category, the home and similar local environment, should be broad enough to cover all the rooms or areas within the immediate vicinity of a consumer's home, including the yard, garage and driveway and any vehicles within such immediate vicinity. By way of example, if a car were parked in a consumer's driveway, the car could receive content from the home network and make use of digital broadcast content received in the driveway after being driven away from the home. Similarly, a personal digital assistant could obtain content while located within the home and retain that content when taken away from the home. A vacation home, boat, or car, when not within the immediate vicinity of a consumer's primary residence, would each be considered a separate local environment.

The second and/or third categories, the user-based and/or hybrid networks, could be established in connection with the approval of Table A technologies. Additional criteria will be necessary to select user-based and/or hybrid network technologies for Table A, and details of any such additional criteria should be determined through public comment in response to an FNRPM. In the meantime, it is important that the scope of the regulation, when first promulgated, not preclude such personal networks.

Moreover, the FNPRM should seek comment on the unique aspects of broadcast content and what additional criteria will be necessary to protect these unique aspects. For example, given that the purpose of the Broadcast Flag rulemaking is to protect against unauthorized redistribution of digital broadcast content, how should retransmission of such content outside a local media market or into a "blackout" area for a live sporting event be treated?

- Regarding a grace period for Broadcast Flag compliance, Sony Pictures would prefer that all digital cable "Plug & Play" compliant products with digital outputs also be Broadcast Flag compliant. Sony Pictures is concerned that any other ruling will create legacy products in the market. However, Sony Pictures acknowledges that it does not have specific expertise in electronic product development and defers to the expertise of Sony Electronics regarding its ability to develop compliant products on a particular timeframe.

In the view of Sony Electronics, the Commission as a general matter should always permit at least an 18-month phase-in period for products to come into

¹ This list is not meant to be exhaustive. There may likely be other networking approaches and technologies that are not yet contemplated but which the Commission would consider appropriate and applicable in the future.

compliance with product regulations, and the Broadcast Flag is not an exception. This phase-in period is necessary to match the life cycle of design, development, production, marketing, and distribution for electronic products. In the current matter, assuming the final Broadcast Flag rule is promulgated in short order, Sony Electronics believes an 18-month grace period is sufficient.

Sony Electronics opposes any proposal to require Broadcast Flag compliance in digital cable Plug & Play compatible products starting in July 2004. Even if Sony Electronics product developers could know today with certainty what requirements will be imposed and could know that those requirements could be satisfied with a software reprogramming "fix" to digital TV circuitry, it is impossible for Sony Electronics to assure the Commission that any products could be released by July 2004 that satisfy both the Plug & Play and Broadcast Flag requirements. This uncertainty is due to many factors, including development of test materials, software engineering, and quality assurance. Moreover, because of the extreme autumn-weighted seasonality of the consumer electronics market, delay in a product's development schedule for even one or two months past July 2004 due to Broadcast Flag development issues would likely cost a manufacturer the opportunity to market that product successfully in 2004 at all.

In addition, Sony Electronics opposes a "waiver" from the Broadcast Flag regulations for a manufacturer that could demonstrate to the Commission that it is so "committed" to a manufacturing process that the process could not be altered in time to meet a Broadcast Flag deadline. Although seemingly favorable to the consumer electronics industry, such a provision in fact would create an unfair market advantage for electronics manufacturers with fewer resources and less flexibility to change product development in mid-stream than other manufacturers. By obtaining waivers, such manufacturers could market products in 2004 that did not respond to the Broadcast Flag and therefore could be perceived by consumers as more attractive than compliant products from manufacturers who could not obtain a waiver. Regardless of whether Sony Electronics might be able to obtain such a waiver for its own products, Sony Electronics does not consider it sound policy for the Commission to facilitate an unbalanced marketplace.

In accordance with Section 1.1206 of the Federal Communications Commission rules, one copy of this notice is being filed electronically.

Sincerely,

<signed>

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CC:

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